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Q244

Inventorship of multinational inventions

Responsible Reporters: by Sarah MATHESON, Reporter General John OSHA and Anne Marie VERSCHUUR, Deputy Reporters General Yusuke INUI, Ari LAAKKONEN and Ralph NACK Assistants to the Reporter General

National/Regional Group	CA-Caribbean Regional-Group
Contributors name(s)	Edy Guadalupe PORTAL
e-Mail contact	egportal@portallaw.com
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I. Current law and practice

1) Please describe your law defining inventorship and identify the statute, rule or other authority that establishes this law.

a) If person A, located outside your country, directs the efforts of person B, located in your country, for making an invention in your country, under what circumstances would person A and/or person B be considered an inventor under your law?

The Salvadorian Intellectual Property Law does not make any distinction in regards to the nationality of the inventors. Article 117 only states that the right to a patent will be granted to the inventor, and in case that the invention is made by more than one inventor, all the intervening parties will be considered inventors.

As a compulsory requirement, the nationality of the inventors must be incorporated in the patent application.

As the Salvadorian Intellectual Property Law does not make a distinction to this regard, both intervening parties would be considered inventors.

b) Does your law defining inventorship rely on or look to a particular part of the patent application? For example, is inventorship under your law determined on a claim by claim basis, determined based on the content of the drawings or the examples, or determined on some other, and if so, what basis?

yes

Please comment:

Does not apply, as all intervening parties would be considered inventors. Inventorship can be inventor of part of the patent or they can be inventors of the whole patent. There are no regulations in this regard. Accordingly, under our Law inventorship can be determined on a claim by claim basis or can be determined by the whole patent or by a part of it. However, for purposes of obtaining a patent certificate all the inventors are considered as inventors of the whole patent. However, if the applicant requests that one inventors must be considered as an inventor of only part of the patent, then the assignment document must reflect this fact.

2) Does your law of inventorship depend on the citizenship of the inventor(s)?

no

Please comment:

No, it does not.

3) Does your law of inventorship depend on where the invention was made (e.g. on the residency of the inventor(s))?

no

Please comment:

No, it does not.

4) Can the inventorship of a patent application be corrected after the filing date in your country?

yes

If yes, what are the requirements and time limits for such correction?:

If the correction pertains to a typo or any other formal mistake, it can be made at any moment before the patent certificate is issued.

If the correction pertains to an error in the identity of an inventor (change of inventor), it should be changed before the patent certificate is issued. To this regards the patent documents must be amended, and a new power of attorney and assignment document must be filed.

5) What are the possible consequences of an error in the stated inventorship on a patent application in your country? Can a patent issued from such an application be invalidated or rendered not enforceable on that basis? Does it matter whether the error was intentional or unintentional?

No, the patent would not be deemed invalid or not enforceable. In order to change the stated inventorship a certificate rectification request must be filed. It does not matter whether the error was intentional or unintentional.

6) Does your law require that an application for a patent claiming an invention made in your country, whether in only one technical area or in all technical areas, be filed first in your country?

no

If no please comment:

If the answer is yes, please answer the following:

a. Is the law requiring first filing in your country limited to a specific area of technology or otherwise

- limited such that it does not apply to all inventions made in your country? If yes, please explain.
- b. Does your law provide for granting of a foreign filing license or similar mechanism that would allow a patent application for an invention made in your country to be filed first in another country? Please describe any such foreign filing license or similar mechanism as well as the procedure, timing, and cost of obtaining it.
 - c. If the answer to b. above is yes, is it possible to obtain a foreign filing license retroactively, for example, if a foreign filing was made without a foreign filing license due to inadvertent error?
 - d. How does your law apply to an application for a patent claiming an invention that was made jointly by an inventor in your country and an inventor in another country? Does this apply based on the citizenship of the inventor, the residency of the inventor, or both? Does the nationality of the patent owner affect your answer?
 - e. In the case of an invention made jointly by an inventor in your country and an inventor in another country, would it violate your law if a request for a foreign filing license was filed in the other country before being filed in your country?
 - f. What are the possible consequences for failing to comply with this law? Does it matter whether the error was intentional or inadvertent?

- a) Is the law requiring first filing in your country limited to a specific area of technology or otherwise limited such that it does not apply to all inventions made in your country? If yes, please explain.

- 7) Does your law require that a patent application claiming an invention made, at least in part, in your country undergo a secrecy review or similar process before it can be filed in another country?

no

If no please comment:

- a. If yes, does this law depend on the area of technology that is disclosed and claimed in the patent application?
- b. If yes, describe this aspect of your law as well as the procedure, timing, and cost of compliance with it.
- c. If yes, describe the possible consequences of failing to comply with this law. Does it matter whether the error was intentional or inadvertent?

II. Policy considerations and proposals for improvements of the current law

- 8) If your law defines inventorship, is this definition sufficient to provide patent applicants with clear guidance as to who should be named as the inventor(s) of a patent application? Are there aspects of this definition that could be improved?

Salvadorian Intellectual Property Law does not provide a definition of inventorship, it only determines that the creator of the invention is granted the patent right. Therefore we consider that a definition should be included in order to provide the patent applicants with a clear guidance as to who should be named as inventor.

- 9) If you have laws requiring first filing of patent applications directed to inventions made in your country, are there aspects of these laws that could be improved to address multinational inventions?

Does not apply.

10) If you have laws requiring a secrecy review of patent applications directed to some or all types of inventions made in your country, are there aspects of these laws that could be improved to address multinational inventions?

Does not apply.

11) Are there other aspects of your law that could be improved to facilitate filing of patent applications having multinational inventorship? If yes, please explain.

As the Salvadorian Intellectual Property Law does not make a distinction between national and foreign inventors, there are no aspects to be improved.

III. Proposals for harmonisation

12) Is harmonisation in this area desirable?

yes

Please comment.:

If yes, please respond to the following questions without regard to your national or regional laws. Even if no, please address the following questions to the extent you consider your national or regional laws could be improved.

13) Please provide a definition of inventorship that you believe would be an appropriate international standard.

Inventorship should be defined taking into consideration that the inventor must have taken part in the conception and not only in the reduction to practice stage of the invention.

Inventorship, the recognition of a person as an inventor due to his/her intervention in the creation of an invention, when the intervention pertains to the conception process, and not only to the reduction to practice stage, and who has contributed to the claims of a patentable invention.

14) Please propose a standard for correction of inventorship after a patent application is filed, together with any requirements necessary to invoke this standard (e.g. intentional versus unintentional error) and any timing requirements (e.g. during pendency of the application).

Standard correction would requisites would include the filing of a petition to correct or amend the application, and a document signed by the persons who are being deleted and by the persons who are being added, as well as the filing of amended power of attorney and assignment documents if applicable.

15) If you believe such a requirement is appropriate, please propose an international standard for first filing requirements that would take into account multinational inventions.

I don't believe such requirement would be appropriate.

16) If you believe such a requirement is appropriate, please propose an international standard for secrecy review requirements that would take into account multinational inventions.

I don't believe such requirement would be appropriate.

17) If you believe such a requirement is appropriate, please propose an international standard for obtaining a foreign filing license.

I don't believe such requirement would be appropriate, as patent filing licenses are not compulsory to all countries.

18) Please propose an international standard for an ability to cure or repair an inadvertent failure to comply with a first filing requirement or a security review requirement.

I don't believe that first filing requirements should be compulsory and failure to comply with such requisite should be easily corrected by allowing the filing of the patent application in the country where the first filing requirements are compulsory.

19) Please propose any other standards relating to multinational inventions (excluding those related to inventor remuneration or ownership of the invention) that you feel would be appropriate.

I consider that no obstacles should be set for the registration of multinational inventions.

Summary

Please comment on any additional issues concerning the multinational inventions you consider relevant to this Working Question.